

Date: February 5, 2013

To: Thomas J. Bonfield – City Manager

Through: W. Bowman Ferguson – Deputy City Manager

From: Marvin G. Williams – Director of Public Works

Subject: Update on Failed and Struggling Developments

Executive Summary

The Failed and Struggling Development Program was created to assure the completion of all required infrastructure and private stormwater facilities at minimal costs to citizens and the City of Durham. The City of Durham Public Works Department currently oversees the program and is responsible for approximately 138 projects or phases of projects; which span across 34 subdivisions. This update summarizes the following items:

- A. Number of projects per category as of February 5, 2013
- B. List of developments added to program since July 1, 2012
- C. Status of current Category 4: Failed developments
- D. Status of Category 3 Projects in Litigation: Stonehill Estates and Ravenstone I & II
- E. Developments successfully completed since July 1, 2012

Recommendation

The Public Works department recommends that City Council receive the update on the Failed and Struggling Development Program.

Background

Since late 2008, the economy has drastically changed the manner in which the construction and housing industries operate. These changes have resulted in a country-wide decline in new home sales and overall commercial developments. In addition, banking and financial markets which provided financial assistance to developers, builders, and owners, have undergone changes that have resulted in an environment that is inherently unstable for these customers. This instability has created situations in which some developers are no longer able to sustain developments and are forced to close their businesses or restructure their companies. As a result of the company closings and restructurings, some developers have not completed the street, sidewalk, and stormwater facility infrastructure required for developments.

In response to this situation, the Failed and Struggling Development Program was created in early 2009. The Public Works Department was assigned to oversee this program to assure the completion of required infrastructure.

As developments are added to the program, the Public Works Department has placed each development into one of four categories of financial distress. Each development has unique circumstances and the tools that are available to help guide one development to completion, but may not be available to the same degree in another development. Projects may move from one category to another based on various factors (developer solvency, product sales, assets, construction security amounts, infrastructure to be completed, etc.). The four categories are defined as follows:

- **Category 1- Restructured Developments:** The developer restructured the company or a new developer purchased the project. Projects have appropriate construction securities in place and are completing the required infrastructure.
- **Category 2 – Monitored Developments:** Projects have shown multiple signs of financial distress. Public Works has been monitoring the development's progress and is working with the Developer to assure completion of the project's infrastructure. The lender will often become part of the discussion to monitor the project in case the project goes into default.
- **Category 3 – Struggling Developments:** The developer has filed for bankruptcy or is unresponsive to Public Works requests to complete the infrastructure. Public Works and the City Attorney's Office will begin obtaining any remaining funds available for completion of the development (either through calling securities or actively pursuing these funds through lawsuits).
- **Category 4 – Failed Developments:** The developer company has functionally dissolved and Public Works has either obtained construction security funds or there were no construction securities available. The Public Works department is working through available options for consideration by City Council to determine the most appropriate way to complete the required infrastructure.

The Public Works Department's most difficult developments to bring to successful conclusion are located in Category 4. These developments may lack sufficient construction security funding to complete the infrastructure required in the project and the development companies are defunct. Construction security amounts were established with prices current at the time of construction, but as developments languished the base price of labor and

materials has increased dramatically. Many developments have degraded over time due to the developer's neglect, and in some cases the degradation has been substantial. The cost to repair the degradation increases the cost to complete such developments considerably. Construction security amounts were initially established as reasonable security measures to ensure compliance, not as a total project completion funding source. Accordingly, in most cases the construction securities are insufficient and considerations of other ways to secure funds to complete the infrastructure are necessary.

In 2012, policies were developed by the Public Works Department and approved by City Council to attempt to prevent a repeat of situations like this from occurring in the future. Security amounts have been increased to levels that would appropriately fund completion of the required infrastructure. Monitoring of these securities and amounts occurs annually.

Issues and Analysis

The following updates and information items are provided by the Public Works Department and are current as of February 5th, 2012.

A. Number of projects per category as of February 5, 2013

Table 1: Project and Subdivision Totals per Category

Category	Description	Projects or Phases	Number of Subdivisions Represented
1	Restructured Developments	24	7
2	Monitored Developments	46	8
3	Struggling Developments	43	9
4	Failed Developments	25	10
	TOTALS	138	34
	Completed Developments*	53	20

*Note: These developments were completed without financial impact to the residents of the projects.

B. List of developments added to program since July 1, 2012

The Public Works Department added the following developments to the Failed and Struggling Development Program.

1. Crestfield (Category 3 – See also Item D below)
2. The Landings at Southpoint (Category 4)
3. Northern Way Subdivision (Category 4)

4. Forrest Brook Subdivision (Category 4)
5. Grove Pointe (Category 3 - See also Item D below)

C. Status of current Category 4: Failed developments

The Category 4 failed developments are listed below in Table 2. A specific status update for each project follows this table. Attached to this memo in Appendix A are satellite maps with legends indicating the location of the developments, incomplete infrastructure, stormwater facility locations (BMP), and completed infrastructure.

Table 2: Category 4 Summary

Subdivision	Total Lots	Vacant Lots	Security Obtained		Incomplete Infrastructure
			Streets	Stormwater Facilities	
Dunwoody	12	0	\$0	n/a	Street
Lynn Hollow II Ph 1 & 2	47	0	\$22,000	n/a	Streets
Bay Pointe Phase III	68	0	\$145,000	n/a	Streets
Green Gardens Phase II	70	18	Any Remaining funds from Baypoint III	n/a	Streets
Pearl Knoll	12	6	\$10,000	\$12,000 and \$4,317 (SFA)*	Streets and stormwater facility
Riverside on the Eno	24	13	\$60,000 (\$30,000 used to pave the streets)	\$24,000 and \$19,790 (SFA) +\$30K left from streets	Stormwater facilities
Windermere Ridge Townhomes	42	19	\$10,000	\$60,000	Street and stormwater facilities
Northern Way	13	6	\$14,000	\$42,496	Street, transfer of Stormwater Facility to an active HOA, address maintenance deficiencies,
Forrest Brook	20	1	\$6,000	n/a	Sidewalk only
The Landings at Southpoint Phase 1	2 buildings with 27 apartments each built (1 future building with 103 units remaining)		n/a	\$0	Stormwater facilities

* (SFA): Funds to secure obligations required by Stormwater Facility Agreements
Project Status Updates

1. Dunwoody: A twelve lot subdivision project that has houses constructed on all lots. The development contains a single ribbon paved cul-de-sac street in which the street has not been completed. This subdivision has no required stormwater facilities. The Public Works Department will bring this development forward with multiple options and a recommendation within the next three months on how to complete this final piece of infrastructure.
2. Lynn Hollow II: A forty seven lot phase of the subdivision that has houses constructed on all lots. The development requires the completion of streets in conformance with City requirements, which includes among other items, repairs to curb and gutter, utility cover adjustments, street subgrade repairs, and completion of the required asphalt structure. This subdivision has required stormwater facilities but these facilities were completed by the original developer and are currently owned and maintained by the Lynn Hollow Home Owners Association. As funding has been secured for the 2013 fiscal year, these streets will be completed in 2013. The money collected from the construction security will be used for a paving contract.
3. Bay Pointe Phase III: A sixty eight lot phase of the Bay Pointe subdivision project with all lots completed. The development requires the completion of streets in conformance with City requirements, which includes among other items, repairs to curb and gutter, utility cover adjustments, street subgrade repairs, and completion of the required asphalt structure. This subdivision has no required stormwater facilities. As funding has been secured for the 2013 fiscal year, these streets will be completed in 2013. The money collected from the construction security will be used for a paving contract.
4. Green Gardens Phase II: A seventy lot phase of the Bay Pointe Subdivision with eighteen vacant lots left for construction. The development requires the completion of streets in conformance with City requirements, which includes among other items, repairs to curb and gutter, utility cover adjustments, street subgrade repairs, and completion of the required asphalt structure. This subdivision has no required stormwater facilities. The vacant lots in the subdivision are owned by SunTrust Bank. The Public Works Department has met with 4 developers interested in buying the vacant lots and has explained to them the work required to complete the infrastructure. None of the developers have emerged from the negotiation process to purchase the project.
5. Pearl Knoll: A twelve lot project with six vacant lots, the development requires the completion of streets in conformance with City requirements, which includes among other items, repairs to curb and gutter, utility cover adjustments, street subgrade repairs, and completion of the required asphalt structure. The subdivision has a single stormwater facility that must be completed. The vacant lots in the project are owned by BB&T Bank. The Public Works Department has been working with BB&T to resolve the situation, since insufficient security funds exist to complete all of the

required improvements. This task has been complicated by the lack of a legally established HOA.

6. Riverside on the Eno: A twenty four lot subdivision with thirteen vacant lots owned by BB&T and private owners. The development contains two stormwater facilities that need to be completed. During the 2012 paving season, the Public Works Department completed the streets using approximately half of the money from the construction security collected for this purpose. The remaining funds from the construction security will be used for the completion of the stormwater facilities.
7. Windermere Ridge Townhomes: A forty lot phase of a seven phase townhouse project. The development requires the completion of a street in conformance with City requirements, which includes among other items, repairs to curb and gutter, utility cover adjustments, street subgrade repairs, and completion of the required asphalt structure. The subdivision has a single stormwater facility that must be completed. The completion of the development has been delayed due to bankruptcy and foreclosure for the third time. At the end of the current foreclosure, SouthBank will become the new owner of the project. The future phases of the development have been purchased by a new owner who will develop these parcels in the future. The Public Works Department, Southbank and the new developer are developing an agreement to use the collected securities so that the infrastructure can be completed in the near future.
8. Northern Way: A twelve lot project with six vacant lots, the development requires the completion of streets in conformance with City requirements, which includes among other items, repairs to curb and gutter, utility cover adjustments, street subgrade repairs, and completion of the required asphalt structure. The subdivision has a single stormwater facility that was completed but not appropriately maintained or transferred to the home owners association. The vacant lots are owned by RCP Investments, LLC and private owners. The Public Works Department has met with developers interested in buying the vacant lots and has explained to them the work required to complete the infrastructure.
9. Forrest Brook: The streets are complete in this subdivision. The only infrastructure that remains to be built is approximately 100 feet of sidewalk and one curb ramp in front of the only vacant lot. Public Works will require the owner of the lot to build the sidewalk and curb ramp prior to releasing the certificate of compliance.
10. The Landings at Southpoint: The first phase of a condominium development, the development contains three stormwater facilities that are unfinished and are currently unmaintained. The project contains no streets, only parking lots. Paragon Commercial Bank has foreclosed on the development rights to the project for the future condominium units. The Public Works Department has met with Paragon Commercial Bank and has explained to them the work required to complete the infrastructure.

D. Status of Category 3 Projects in Litigation: Stonehill Estates and Ravenstone I & II

The securities associated with Ravenstone and Stonehill Estates subdivisions are the subject of a federal declaratory judgment lawsuit brought by the companies that issued the securities. Both the City and the sureties have filed motions for summary judgment. The judge has not ruled on these motions yet.

E. Developments successfully completed since July 1, 2012

1. Stoneybrook Cottages Phase 1 & 2: In 2009 and 2010 Public Works collected construction and maintenance securities to complete the remaining infrastructure in the street and stormwater facilities. Public Works and the City's Attorney's Office prepared an agreement that allowed the City of Durham, the original developer and the subdivision's Home Owner's Association to use the securities collected to complete the infrastructure. The Public Works Department completed the streets and stormwater facilities in October 2012. The Public Works department will request the streets to be accepted by the City. The Stoneybrook Cottages HOA will take over the maintenance of the stormwater facilities after acceptance of the streets by City Council.
2. Grove Point: A 19 lot subdivision with 9 vacant lots recently completed the foreclosure process and was added to the Failed and Struggling Development Program as a Category 3 struggling development in 2012. The developer went bankrupt prior to completing the streets. Stormwater facilities were not required for this subdivision. In August of 2012, the Public Works department requested the construction security funds from the bonding company Developers Surety. During this time, a new developer contacted Public Works expressing interest in purchasing the vacant lots of the project. Public Works assisted in negotiations between the new developer, banks and bonding company by facilitating meetings between all parties. The new developer, working with the bonding company, completed the street in October 2012.
3. Crestfield: A 31 lot subdivision with 18 vacant lots recently completed the foreclosure process. The subdivision was added to the Failed and Struggling Development Program as a Category 3 struggling development in 2012. The developer went bankrupt prior to completing the streets and a drainage issue created by the development of the project. Stormwater facilities were not required for this subdivision. Harrington Bank, FSB completed the street infrastructure in December 2012. The drainage issue will be resolved within the next few months.

The Public Works Department continues to coordinate with developers, banks, bonding companies, attorneys, and prospective buyers to complete infrastructure for projects in the

Failed and Struggling Development Program. In the future, the Public Works Department will bring to City Council specific projects with recommendations for action when projects have no route to completion other than specific City intervention.

Alternatives

The Alternatives section is not applicable for this update.

Financial Impact

The Financial Impact section is not applicable for this update.

SDBE Summary

The SDBE Summary section is not applicable for this update.